Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	MB Docket 07-294
In the Broadcasting Services	)	

To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

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SUMMARY

In these comments, Nexstar Broadcasting, Inc. ("Nexstar") demonstrates that the Commission should (1) bring its local television ownership rule ("Local TV Ownership Rule") into the 21st century by allowing the ownership of two television broadcast stations in any market, and (2) unless and until it provides such relief, decline to make news, advertising and other service sharing arrangements between two stations ("Local Service Agreements" or "LSAs") attributable under its rules.

Television broadcasters like Nexstar play an important and sometimes critical role in their communities -- for example, giving the community advance notice that an EF-5 tornado is heading its way with the station's staff then going above and beyond to provide the community with as much immediate information on the damage, shelters and where to find assistance as possible; sponsoring a telethon that raises more than $600,000; broadcasting 25 or more hours of local news per week as well as covering local sporting events; and, of course, broadcasting popular network and syndicated programming. By serving the community in this way, television stations enhance audience loyalty thereby attracting advertisers willing to pay higher rates, ultimately generating higher revenues for the station.

Providing this level of service and local programming to the community is expensive, with news production expenses exceeding $1 million per year in small markets and $1.5 million in medium markets. Yet, medium and small market television-only broadcasters are facing significant revenue challenges as the availability of news and information and entertainment explodes across multiple platforms to be accessible practically anytime and anywhere at a viewer's whim.

Today, television broadcasters compete for advertising revenues against multichannel video programming distributors, Internet news and information sources like Google and Yahoo, social networking tools like Facebook and Twitter, newspapers, radio and many other platforms. Television broadcasters also are competing against more than 150 general entertainment and niche cable channels for viewers, while their affiliated networks make their programming available on the networks' own Internet websites or through services such as iTunes shortly after broadcast.

Broadcasters competing in this fragmented, multi-screen, multi-source environment must operate as efficiently and economically as possible. Duopoly ownership provides efficiencies and cost savings through the co-location of studio and office facilities, sharing of management, administrative and technical staff, efficiencies in advertising, sales and newsgathering, reduced corporate overhead, cost of money efficiencies and reduced third party consulting expenses. The Local TV Ownership Rule, with its outdated and artificial ranking and voice metrics that prohibit duopolies in medium and small markets, is severely limiting the ability of medium and small market television broadcasters to remain competitive in today's media environment.

Bringing the Local TV Ownership Rule into the 21st century will not harm the Commission's policy goals of competition, localism and diversity, which serve as proxies for ensuring viewers have access to local news and other programming. Neither the top four restriction nor the eight voice requirement of the Local TV Ownership Rule provides any support for the Commission's policy goals. Television stations – regardless of in-market station ranking – seek to provide viewers with the best available network, syndicated and local programming in order to drive them watch the station. And with the plethora of diverse media sources and voices available today in all markets, it is no longer necessary for the Commission to govern the number of stations a broadcaster may own in a market in order to ensure consumers have access to a wide variety of information sources.

Further, neither the top four restriction nor eight voice requirement has any correlation to whether a local television broadcaster actually provides local news and information programming. Rather, whether a station produces local news is predominantly a function of its market revenues (i.e., whether the market has enough revenues to support the station's production of local news) and history. For example, ABC, CBS and NBC historically provided their affiliates with network compensation to encourage them to provide local news programming to support their national news programs, and these stations are therefore more likely to have news production capability. FOX, on the other hand, has never provided network compensation and, notwithstanding its ranking as the number one network among adults 18-49 for several years, its smaller market affiliates do not broadcast local news or have not attempted to do so until recently.

Additionally, many television broadcasters, including Nexstar, have provided strong evidence that duopoly ownership actually increases the amount of local news programming in the market because the stations are able to use the cost savings generated from the duopoy's efficiencies to provide more and better programming. For example, Nexstar's second station (WCIX) in the Champaign-Springfield-Decatur Designated Market Area, which receives less than two percent of the market's revenues, broadcasts 2.5 hours of local news per day Monday through Friday. It also broadcasts local sports programming and will be broadcasting 2 hours of live coverage of the local marathon because it has the production equipment and staff to do so as a direct result of the duopoly. Thus, rather than focusing on ensuring that there are a set number of voices in the market, the Commission would be better served by assuring that consumers have access to financially viable outlets with sufficient resources to provide the programming that consumers desire to meet their needs.

Although duopolies provide stations with the greatest level of efficiencies (providing the greatest benefit to revenue-challenged medium and small market stations), because the current Local TV Ownership Rule prohibits duopolies in those markets most in need of such ownership relief, many of these stations have entered into Local Service Agreements. Nexstar's LSAs allow the stations to produce and broadcast more local news and other local programming; allow the stations to invest in significant capital expenditures for Doppler weather radar, satellite trucks and high definition news equipment; allow the stations to be more active community participants; and provide public service organizations with an expanded platform to promote their causes within the community. Without these LSAs, both stations would be significantly impacted, with one station losing the ability to produce local programming without the expenditure of resources that simply are not available in these small markets.

For all of these reasons, Nexstar urges the Commission to set aside its obsolete rankings and voice restrictions and bring its Local TV Ownership Rule into step with today's hypercompetitive media environment to permit television-only broadcasters to own more than one station in all markets. Failing that, the Commission must continue to permit medium and small market television broadcasters to enter into the LSAs that provide these revenue-challenged stations with the ability to more efficiently and effectively serve their local communities.

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To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. ("Nexstar")[1] respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking (FCC 11-186, released Dec. 22, 2011) (the "NPRM") in the above-captioned proceeding. The NPRM undertakes the Commission's statutorily required quadrennial review of its media ownership rules to determine whether these rules remain "necessary in the public interest as the result of competition."[2] Although the Commission is seeking input with respect to several of its media ownership rules, Nexstar's comments herein focus on the Commission's local television ownership rule (the "Local TV

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[1] Nexstar owns and operates 35 full-power television stations serving 32 medium and small markets. Nexstar is a pure television company – it does not own radio stations or cable or other multichannel video programming distributors ("MVPDs"); it does not publish newspapers, magazines or books; it does not have ownership interests in programming (other than with respect to its own locally-produced news and other public interest programming) or MVPD programming channels; it does not produce movies; it does not own advertising representation firms or outdoor billboard spaces; and it does not engage in non-media businesses such as theme parks or financial services. Accordingly, Nexstar is in a unique position to provide insight into the current media landscape and its effect on those television broadcasters that do not derive revenues from other sources.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004).

Ownership Rule"), and the related question of whether shared services agreements, joint sales agreements, outsourcing agreements and other similar agreements (collectively, "Local Service Agreements" or "LSAs") should be made attributable under the Commission's rules.[3]

Nexstar respectfully urges the Commission to eliminate the current anachronistic Local TV Ownership Rule and permit television-only broadcasters like Nexstar to compete effectively in today's ever-expanding, technologically advancing media marketplace. Only with an updated rule that allows television duopoly ownership in all markets will companies such as Nexstar be able to effectively compete against companies like Comcast/NBC Universal (which owns the nation's largest cable distribution system, 10 cable networks, two television networks, 20 television stations, interests in nine regional sports networks, a movie studio, theme parks, a one-third interest in Hulu, and multiple websites); Facebook (which earns most of its revenues from advertising within its site, and on February 1, 2012 filed for an initial public offering which is expected to result in a valuation of Facebook in excess of $100 billion); Discovery Communications (which owns 14 cable networks and their associated websites); Google and Yahoo (which generate the vast amount of their revenues from advertising); and many others.

Nexstar also urges the Commission to ignore the unsupported, speculative assertions that Local Service Agreements reduce local programming and somehow "circumvent" the Commission's rules and decline to make them attributable interests under its rules.

I. INTRODUCTION.

A. Local TV Broadcasters Provide Invaluable Service To Their Communities.

Local television broadcasters have a long history of serving the public interest by providing news and other information responsive to community needs, and it is this commitment

[3] 47 C.F.R. §73.3555(b).

to their communities that distinguishes local broadcasters from other participants in the media marketplace. Among other things, local stations provide current and up-to-date information with respect to general news in the local community, severe weather alerts, school closing notices and AMBER alerts. Local television stations also actively engage in local community activities.

For example, on May 22, 2011, a rain-wrapped EF-5 tornado tore a six-mile-long, three quarters of a mile wide path of destruction through the middle of Joplin damaging thousand of buildings and killing more than 150 people. Nexstar's KSNF began weather cut-ins notifying the community of the impending severe weather at approximately 5:00 p.m., which gave Joplin 37 minutes warning.[4] Nexstar went to continuous live weather coverage at 5:30 p.m., with the tornado beginning its destruction of Joplin at 5:41 p.m. KSNF's tower camera caught the approaching tornado on camera allowing the KSNF weather team to give viewers an extreme sense of emergency.[5] In a community long used to ignoring tornado sirens, Nexstar believes that its tower camera footage and weather staff was instrumental in saving lives that day. Indeed, even today, people continue to stop in to thank the stations for providing the information that saved their lives.

More routinely, Nexstar's station WTAJ-TV, serving the Johnstown-Altoona-State College, PA market, produces and broadcasts local news Monday through Friday from 5:00 a.m. to 7:00 a.m., has a half hour newscast at 12:00 p.m., broadcasts news from 5:00 p.m. to 6:30 p.m. and has a 35 minute newscast at 11:00 p.m. WTAJ-TV's weekend newscasts are at 6:00 p.m.

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4 KSNF and KODE-TV (owned by Mission Broadcasting, Inc. and part of an LSA with Nexstar) have a state-of-the-art doppler weather radar system which gave both stations the ability to understand the velocity and direction of the severe weather in advance of its impact on the Joplin area. Both stations began their cut-in updates around 5:00 p.m. and their continuous live coverage at 5:30 p.m., with the stations going to simulcast coverage in the immediate aftermath of the tornado in order to allow the limited number of immediately available news personnel to spread out across the damaged area to provide as much information to the community as quickly as possible.

5 A portion of the coverage taped by a viewer and posted to YouTube is available at http://www.youtube.com/watch?v=yDOLjlzQYSs (last visited Mar. 2, 2012).

and 11:00 p.m. In addition, WTAJ-TV produces and broadcasts an hour long local program called *Central PA Live* each weekday at 4:00 p.m., for a total of 29.5 hours of local programming per week.

With WTAJ-TV located between Pittsburgh and Happy Valley (home of Penn State), in 2011 the station produced and broadcast a weekly 30 minute talk show dedicated to Penn State football and the Nittany Nation, a Nittany Nation program to preview the season, a 30 minute program previewing the local high school football season, and multiple shows focused on the Pittsburgh Steelers, including a special focused on the Steelers' 2011 Super Bowl run.

In addition to its programming, WTAJ-TV sponsors numerous community events, including events like the Children's Miracle Network Telethon (the station raised $607,000 for the organization) and residential paper shredding events (resulting in over 40,000 pounds of free paper shredding for its viewers). WTAJ-TV also serves as the official TV station for:

- Penn State-Blue White Weekend (the University's unofficial reunion weekend)
- Central PA Arts Fest
- Huntingdon County Fair
- Sykesville AG & Youth
- Penn State Altoona Speaker Series
- DuBois Block Party
- Altoona Jazz Concerts
- Central PA Rodeo
- Philipsburg Heritage Day
- Blair Respiratory Disease
- Easter Seals Central PA
- Penn State Pink Zone
- Making Strides Against Breast Cancer
- Multiple Sclerosis Society Cook Forest

WTAJ-TV serves as a partner for Altoona Curve Baseball, State College Spikes Baseball, the Bedford County Fair and the Clearfield County Fair TV. In addition, station personnel visit local schools and individually participate in the community.

Nexstar's station WDHN, which serves Dothan, Alabama, produces a 90 minute local newscast from 5:30 a.m. to 7:00 a.m. Monday through Friday and half hour newscasts at 5:00 p.m., 6:00 p.m. and 10:00 p.m. Monday through Friday for 15 hours of local news per week. WDHN also produces a half hour program on Sunday nights at 10:00 p.m. called *Beyond The Headlines* which features current affairs topics.

As with WTAJ-TV, WDHN's personnel are active in the local community. The station provides tours of the station to interested groups and sponsors numerous community events, including: Wiregrass Blood Drives, Wiregrass United Way, Wiregrass Children's Home, Landmark Place, Child Advocacy Center, Wiregrass Boys and Girls Club, the National Peanut Festival, Future Masters and TriStates BBQ Festival, food drives, adopt-a-pet programs and many others. (Wiregrass is how the locals refer to their particular area of Alabama, Georgia and the Florida panhandle.)

There is nothing unique about Nexstar's stations KNSF, WTAJ-TV and WDHN – all of Nexstar's stations are equally dedicated to serving their communities.

B. Today's Media Marketplace Is Extremely Competitive.

Today's consumers live in a time where they can find news and information from numerous sources (radio, television, MVPD channels, the Internet, newspapers, social networking sites, community newsletters and bulletin boards, among others) in a variety of formats (audio, video, RSS, SMS, MMS, mobile) at virtually any time. Consumers also have convenience and choice as to when and how they obtain their news and information, with technology giving consumers more ways to find information on specific topics and access to more targeted programming.[6]

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[6] As one example of rapidly changing technology, Internet-connected "smart" television sets, blu-ray players and game consoles (with built in applications for accessing Netflix, YouTube, Pandora, Hulu and the like) are set to

A recent survey by the Pew Research Center's Project for Excellence in Journalism and the Internet & American Life Project found that 64% of Americans use at least three different types of media *every week* to get news and information about their local community, with 15% using at least six different kinds of media weekly.[7] The survey further found that, for the 79% of Americans who are online, the Internet is the first or second source for local news and information for 15 of the 16 local topics examined, with those under 40 using the Internet for local community information even more, with many of these Internet sources unrelated to legacy media such as television and newspapers.[8] All of these improvements in information sources and access have led to substantial fragmentation in the media market as people gravitate toward those niches that fit their particular interests.

Along with this explosion in available platforms for obtaining local news and information, television broadcasters now compete for viewers and revenues not only against other in-market television broadcasters, but also with a plethora of non-broadcast TV programming networks, including mass appeal networks such as Discovery, USA Network, and TBS, and niche networks, including Bravo, History Channel, Golf (or name your sport) Channel and many others.[9] In fact, the collective ratings for advertising-supported MVPD-delivered

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experience significant growth over the next few years. *See e.g.*, *Smart TVs Projected for Big Growth*, Samantha Murphy, Tech News Daily, July 26, 2011, available at http://www.technewsdaily.com/2940-smart-tvs-projected-for-big-growth.html (last visited Mar. 2, 2012).

7 *How People Learn About Their Local Community*, Tom Rosenstiel, Amy Mitchell, Kristen Purcell and Lee Rainie, September 26, 2011, available at http://www.journalism.org/analysis_report/local_news (last visited Mar. 2, 2012) (hereinafter "Pew Local News Study").

8 *Id.*, available at http://www.journalism.org/analysis_report/role_internet (last visited Mar. 2, 2012).

9 Twenty years ago, the average American household had access to 28 TV channels. Today, Americans have at least 165 channels and watch networks like Military Channel, Investigation Discovery and BBC America. Twenty years ago, in an average week, there were hundreds of shows with a rating of 10 or better. Today, there are scarcely more than a dozen. *See TV Has A Growing Reach Problem (TV Used to Put the 'Mass' In Mass Media. Not Anymore)*, Dave Morgan, AdAgeDigital, Feb. 28, 2012, available at http://adage.com/article/digitalnext/tv-put-mass-mass-media-anymore/232988/ (last visited Mar. 2, 2012).

programming now exceed the collective ratings for broadcast television with MVPD-delivered programming averaging a 60.3 prime time share for the period September 2010 through May 2011 versus a 38.5 share for broadcast television.[10]

Television broadcasters also compete for advertising dollars against local cable providers who sell local commercial advertising time in cable programming through interconnects.[11] And they compete for advertising revenues against local and national newspapers, the Internet, social networking sites, Google, direct mail, outdoor, and many other platforms.

In addition to multi-source availability and viewer and revenue fragmentation, the broadcast networks are making their programming available on their websites within days, and sometimes hours, of a program's broadcast on local television;[12] and viewers can download network and syndicated programming from iTunes on their computers and mobile devices.[13] Sporting events such as the NCAA college basketball tournament and major league baseball games are available for purchase "live" on the Internet, with the Super Bowl streamed live, simultaneously online for the first time in 2012. And in another new twist, ESPN is launching a

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10 *See Why Ad-Supported Cable*, Cable Advertising Bureau, available at http://www.thecab.tv/downloads/Why-Cable-2012-public-site.pdf, p. 11 (last visited Mar. 2, 2012).

11 Cable interconnects are generally under common ownership with the dominant local cable provider in a market and sell the local advertising for national cable programming channels such as ESPN, TNT, Lifetime, USA Networks and many others. Local television broadcasters also compete against these same cable interconnects for the employment services of talented sales, news and production personnel.

12 *See e.g.*, http://www.cbs.com/video/; http://www.nbc.com/ (video); http://abc.go.com/watch; http://www.fox.com/full-episodes/; and http://www.cwtv.com/cw-video/ (each last visited Mar 2, 2012).

13 *See* http://www.apple.com/itunes/charts/tv-shows/ (last visited Mar 2, 2012).

video player on the Facebook social media site making the 2012 NCAA Championship Week games available directly from Facebook.[14]

It is this fragmented, multi-screen, multi-source environment – not the artificially designated "television-only" marketplace of the Commission's making – in which broadcasters such as Nexstar are competing.

C. The Local TV Ownership Rule Is Outdated and Illogical.

The Local TV Ownership Rule permits one entity to own, operate or control two television stations in the same Designated Market Area ("DMA") if the Grade B contours of the stations do not overlap or, if at the time an application to acquire the second station is submitted, at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned and operating full-power television stations would remain in the market. The Commission adopted these "voice" and ranking requirements based on its conclusion that television broadcast stations were the primary source of news and entertainment programming for Americans; that non-television broadcast alternatives were not widely accessible or meaningful substitutes for broadcast television; and that such a rule was necessary to preserve viewpoint diversity in local news presentations.[15]

Much has changed from 1999, when the current rule was adopted. As the Commission itself has recognized, "the proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace."[16] Consumers now have a plethora of media

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14 See ESPN Buddies Up with Facebook, Todd Spangler, Multichannel News-Broadcasting & Cable, February 29, 2012, available at http://www.broadcastingcable.com/article/481202-ESPN_Buddies_Up_With_Facebook.php (last visiting Mar. 2, 2012).

15 *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999), subsequent history omitted ("1999 Biennial Review Order").

16 NPRM at p. 2.

choices available to them on multiple platforms, providing many options for obtaining local, regional, national and world news and information with many of these sources available both at home and on-the-go through mobile media.[17]

Moreover, the Local TV Ownership Rule is illogical within the context of the Commission's other media ownership rules (or lack thereof). The Commission's scheme of media ownership regulation permits a company such as Comcast to own the local cable system, two broadcast TV networks, cable programming channels, one or two local television stations depending on the market (and radio stations should it choose). Yet the Local TV Ownership Rule denies television-only broadcasters a second station with which to attempt to compete against large, integrated, multi-platform video companies in all but the largest markets.

In addition, the Local TV Ownership Rule, by permitting common ownership of two television stations only in markets with eight or more independently owned stations, provides relief where it is needed least. In New York City and Los Angeles, where revenues are the largest in the nation and the biggest, most diversified television/video companies own stations, the rule allows multiple television station ownership. Meanwhile, in Dothan and Marquette, where market revenues are among some of the smallest in the nation, a television broadcaster is limited to owning one station. The rule, in other words, fails entirely to provide relief in the small and medium markets where it is needed the most.[18]

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[17] Forty-seven percent of American adults report that they get at least some local news and information on their cellphone or tablet computer. *See The State of the News Media 2011, An Annual Report On American Journalism – Survey: Mobile News and Paying Online*, Pew Research Center's Project for Excellence in Journalism, available at http://stateofthemedia.org/2011/mobile-survey/ (last visited Mar. 2, 2012) (hereinafter the "State of the News Media 2011").

[18] Additionally, the rule's focus on "top four" stations paints with an overly broad brush. For example, in the Wilkes Barre-Scranton DMA, WNEP-TV, owned by Local TV, has been for many years and still remains far and away the market leader in terms of audience ratings (and is among the top-rated stations nationally in respect of local news). *See WNEP newscasts get top national ratings*, Andrew M. Seder, Times Leader, January 25, 2012, available at http://www.timesleader.com/business/WNEP_newscasts_get_top_national_ratings_01-25-2012.html

The Local TV Ownership Rule is discrimination without logic – the same competitive conditions apply to every media company from Comcast to the single market, single station owner. Moreover, those same competitive conditions are going to impact a smaller competitor that competes in a smaller revenue pool much more significantly. While the Local TV Ownership Rule may have served a purpose in the past, in today's ever-expanding, competitive media marketplace this regulation severely limits the ability of medium and small market television stations to compete effectively in today's media marketplace. It is time for the Commission to bring its media ownership rules into the 21st Century and permit duopoly ownership in all television markets for television-only broadcasters such as Nexstar.

II. UPDATING THE LOCAL TV OWNERSHIP RULE WILL NOT HARM THE COMMISSION'S PUBLIC INTEREST GOALS OF COMPETITION, DIVERSITY AND LOCALISM.

The Commission has long used its media ownership regulations as a proxy to ensure that its policy goals of competition, diversity and localism are met. In turn, the Commission has used these policy goals to encourage the provision of local news. Updating the Local TV Ownership Rule to permit duopolies in all markets for television-only broadcasters (regardless of the number of stations in the market or a station's "rank") will not make the local television market any less competitive, will not deprive viewers of television programming focused on their communities' needs and will not subject viewers to a less diverse array of programming. Indeed, updating the Local TV Ownership Rule to permit duopolies will do much to preserve consumers' access to robust and competitive broadcast television stations.

(last visited Mar. 2, 2012). Nonetheless, the Local TV Ownership Rule prohibits common ownership of the second and third, or the third and fourth, ranked stations in the DMA, even though the combined ratings of two such stations would not equal WNEP-TV's rating. The "top four" component of the rule, in other words, fails to account for actual competitive conditions in a market, such as when the presence of a dominant station renders the other "top four" stations less than fully competitive in reality.

A. The Local TV Ownership Rule Is No Longer Necessary To Ensure Consumers Have a Competitive Media Marketplace.

In 2006, the Commission stated that a competitive local television market benefits the public by "spurring more innovative programming and more programming responsive to local needs and interests."[19] In the NPRM, the Commission continues the false premise of thinking that if television stations have fewer television-owner competitors they will for some reason stop providing viewers with the best programming possible. This is simply not true. Television stations compete with every other form of entertainment option available to potential viewers, whether that competition is from cable network programming, video-on-demand programming (whether movies, broadcast television shows, cable network shows or other video programming), radio, Internet, gaming, theaters, symphonies, opera, concerts, sporting events, or any other media and entertainment that a viewer may choose to "use" if the broadcaster is not offering compelling programming that engages the viewer.

Nexstar's stations compete for audience share specifically on the basis of program popularity because that popularity has a direct effect on the advertising rates it can charge its advertisers. In addition, strong local news typically generates higher ratings among attractive demographic profiles and enhances audience loyalty, which may result in higher ratings for programs both preceding and following the news. High ratings and strong community identity make the stations that Nexstar owns, operates, programs, or provides sales and other services to more attractive to local advertisers. This remains true whether the television station is competing against stations owned by others or stations under common ownership. Regardless of the

[19] *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2065 (2008) (subsequent history omitted) (hereinafter the "2006 Quadrennial Review Order").

"competitor," every television station must put its best programming forward to capture and engage viewers; otherwise, the station will not achieve the highest possible revenues from its operations. Nexstar is certain its competitors recognize this indisputable fact.

The Commission also discounts the impact the Internet has had and is having on competition in the media marketplace because broadband is not universally available to all of the country "[leaving] millions of Americans [without] access to news and other programming on the Internet."[20] Notwithstanding the facts that consumers have accessed content online for more than a decade or that 274 million Americans have Internet access today, the Commission seems to think consumers must have broadband (not any other type of Internet service) in order to access to and consume news and other programming via the Internet.[21] The Commission's supposition that consumers cannot access available online media content without broadband is further belied by the fact that online content is the only media sector gaining ground as "old" media continues to lose audience.[22] Notwithstanding any "broadband gaps" that may exist, revenue from digital advertising is expected to grow by 40% and overtake all other platforms by 2016.[23]

The Commission also does not acknowledge that social media recently has emerged as a powerful tool for disseminating information and mobilizing citizens, with 17 percent of adults

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20 NPRM at p. 3.

21 *See Prime Time for Streaming*, by Jon Lafayette, Broadcasting and Cable, February 27, 2012, available at http://www.broadcastingcable.com/blog/Currency/33126-Prime_Time_for_Streaming_.php (last visited Mar. 2, 2012).

22 State of the News Media 2011: Key Findings, available at http://stateofthemedia.org/2011/overview-2/key-findings/ (last visited Mar. 2, 2012).

23 *Who Advertises On News Sites And How Much Those Ads Are Targeted*, Katerina Eva Matsa, Kenny Olmstead, Amy Mitchell and Tom Rosenstiel, Pew Research Center's Project for Excellence In Journalism, available at http://www.journalism.org/analysis_report/digital_advertising_and_news (last visited Mar. 2, 2012).

getting local information from social networking sites at least monthly.[24] As the Commission must acknowledge, dissemination of information via social networking sites was instrumental in the Middle Eastern reform movements in 2011 and played a crucial role in the "Occupy" movements in the United States. And Twitter recently played a significant role in creating a wave of protest when the Susan G. Komen Foundation announced that it would no longer provide funds to Planned Parenthood.[25]

The media marketplace is extremely competitive and growing ever more so as technologies continue to advance. Every cable network program, radio program, Internet website, newspaper, social networking tool, or other advertising supported medium earns revenues that are no longer available to support local broadcast television stations. Handicapping the vital television broadcast segment with outdated restrictions simply is not rational policy making. The Commission must permit television-only broadcasters to compete as efficiently as possible in order to purchase the mass appeal network programming it broadcasts and produce the expensive local news that the Commission and viewers so value.

B. The Local TV Ownership Rule Does Not Preserve Localism or Diversity.

The Commission's localism policy is intended to ensure that each station addresses the significant needs and issues of its community with the programming that it offers.[26] Its diversity policy seeks to ensure that diverse viewpoints and perspectives are available in the content they

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24 *See* Pew Local News Study: Overview, available at http://www.journalism.org/analysis_report/local_news (last visited Mar. 2, 2012).

25 *See On Twitter Still Rough Going for Komen*, February 7, 2012, available at http://www.journalism.org/commentary_backgrounder/On+Twitter+Still+Tough+Going+for+Komen (last visited Mar. 2, 2012). Twitter earns much of its revenues from "brand-related" tweets.

26 NPRM at p. 7.

receive from broadcasters.[27] However, nearly a decade ago the Commission found that its Local TV Ownership Rule does not foster its goals of localism and diversity.[28] Today, every separate and independent media source in a market, whether radio, newspaper, cable, blog, or social networking site, contributes to viewpoint diversity.

Notwithstanding the Commission's previous acknowledgement that the Local TV Ownership Rule is not necessary to foster localism or diversity, the Commission again seeks comment on the question of whether preserving the Local TV Ownership Rule is necessary to ensure that its goals of localism and diversity are met.[29] The answer is a resounding no!

The Local TV Ownership Rule – which governs only how many television stations a broadcaster may own in a market – has no correlation to the question of whether and how a broadcaster is serving its community's needs with diverse and locally responsive programming. And, notwithstanding the repeated, unsupported claims of some public interest organizations that claim joint ownership leads to less diverse programming, station owners desire to maximize their revenues by providing viewers with more choices that appeal to them, not less. Because it is in the licensee's interest to attract the most diverse viewership to enhance overall revenues, two commonly-owned stations will provide diverse programming. The co-owned stations will be affiliated with different networks (which provide different programming); will broadcast different children's programming; will obtain different syndicated programming; and will

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27 *Id*. at p. 8.

28 *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, ¶¶ 169, 179 (2003) (subsequent history omitted) ("2002 Quadrennial Review Order").

29 NPRM at p. 10.

broadcast separate newscasts – otherwise the second station may as well just be a satellite of the first.

In the Champaign-Decatur-Springfield, Illinois and Little Rock-Pine Bluff, Arkansas DMAs where Nexstar is permitted to, and does, own two stations, each station is affiliated with a different network, carries different syndicated programming and has separate newscasts. For example, in the Champaign DMA, Nexstar's station WCIA is affiliated with the CBS network and its station WCIX is affiliated with MyNetwork TV. WCIA broadcasts *Inside Edition*, *Extra* and *Rachel Ray*. WCIX broadcasts *Judge Mathis*, *The People's Court*, *Matlock*, *Tyler Perry's House of Payne*, and *The Insider*, among others. WCIA broadcasts local news from 5:00 a.m. to 7:00 a.m., at 12:00 noon, 5:00 p.m., 6:00 p.m. and 10 p.m. and has a general interest local program called *CI Living* which airs daily from 4:00 p.m. to 5:00 p.m., Monday through Friday. WCIX broadcasts a business news show called *First Business* at 6:30 a.m. and then picks up the morning news from 7:00 a.m. to 9:00 a.m., when WCIA switches to network programming. WCIX also broadcasts local news from 7:00-7:30 p.m., when WCIA is again broadcasting network programming. The WCIX newscasts are not rebroadcasts of the WCIA newscasts because Nexstar would earn substantially less revenues for such repeats. Neither the number nor the rankings of its stations has anything to do with Nexstar's programming choices or decision to broadcast news on both stations. Rather, these choices are driven by Nexstar's desire to maximize the revenues it earns in the market.

For broadcasters to contribute to localism and diversity in local markets, they must be competitively viable and have the resources to invest in new technologies, acquire and produce costly programming, and experiment with new formats and services. The Commission should reaffirm that its policy goals of localism and diversity are not fostered by or correlated to its Local TV Ownership Rule.

C. The Local TV Ownership Rule's Top Four/Eight Voice Restrictions Are No Longer Necessary To Protect The Commission's Policies of Competition, Diversity and Localism.

In 2006, the Commission reaffirmed that its Local TV Ownership Rule was not necessary to support its goals of localism and diversity, but contended that preservation of its top four/eight voice restriction was necessary because competition provides an incentive to television stations to invest in better programming that is preferred by viewers.[30] As demonstrated throughout these comments, television broadcasters are highly motivated to provide viewers with the best possible programming making the voice and ranking restrictions no longer necessary in the public interest.

1. The Top Four Restriction Is Irrelevant to How Much Local Programming a Station Provides.

The top four restriction generally prohibits any television broadcaster from owning two stations in the market which are both affiliated with the ABC, CBS, FOX or NBC networks. This prohibition rests on the Commission's flawed assumption that station market share affects a station's incentive to improve programming to appeal to mass audiences.[31]

Market share has no correlation to a station's incentive to compete. All stations desire to maximize revenues in order to maximize profit. In order to maximize revenues stations must provide consumers with programming that drives them to watch the station. This is true regardless of the station's share of market revenue. Moreover, station ratings are inherently connected to how well the station's network-affiliated and syndicated programming attract

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30 2006 Quadrennial Review Order at p. 2064.

31 NPRM at p. 15.

viewers in the market, and it is inconceivable that the Commission would assume that ABC, CBS, FOX and NBC are not actively competing with each other either at the network level or via the syndicated programming produced in their affiliated studios. Further, market rankings are not necessarily stable over time; they fluctuate as the station's network and syndicated programming ratings improve or fail.[32]

Nexstar also notes that a rule designed to ensure stations provide programming that appeals to "mass audiences" seems contrary to the Commission's stated diversity goal that stations provide programming that meets the diverse needs of their communities. Diversity is not concerned with how many consumers use a particular media outlet or how frequently they do so. Diversity is only concerned with ensuring there are multiple outlets available, as all media outlets available in a market add to diversity. Station ratings are wholly unrelated to the availability of media content reflecting differing perspectives.

Finally, the Commission's assumption that it is unnecessary to eliminate the top four restriction to increase local news because the top four stations are already originating local news is again contrary to reality. Station rankings have nothing to do with whether a station produces local news or the amount of news a station produces. Rather, it is a function of DMA size and revenues, and history.[33] Historically, ABC, CBS and NBC provided their affiliated stations with

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[32] The Commission questions whether it should become involved in how networks and stations affiliate and specifically whether it can prohibit networks from affiliating with certain stations. NPRM at p. 17. To effect this change, the Commission would be required to get involved in contractual matters (something it has a long history of refusing to do) and would require the Commission to micromanage content, which is contrary to the First Amendment and its own stated policies. Further, prohibiting stations from affiliating with the networks of their choice prevents stations from obtaining the content they deem best for their viewers, which appears contrary to the Commission's own policies of encouraging stations to provide content that best serves the needs, interests and tastes of their audiences.

[33] Although the top four ranked stations in the top markets may all produce local news, in medium and small markets this is not the case. For example, KAQY, the ABC affiliate in the Monroe, Louisiana-El Dorado, Arkansas DMA (DMA 137) does not broadcast local news. KARD, the in-market FOX affiliate, is able to broadcast 7.5 hours of local news per week only because of it is a part of an LSA. The only news broadcast on WPGX, the FOX

network compensation (in many cases substantial network compensation) in order to encourage their affiliates to produce a local news program to precede the network's national news broadcasts. However, these networks no longer provide such compensation and, in fact, are now requiring stations to pay them compensation, thereby reducing further the funding available for production of local news. The FOX network has never provided its affiliates with compensation and, notwithstanding FOX's ranking as the number one network among adults 18-49 for several years,[34] many smaller market FOX stations do not broadcast local news or have not attempted to do so until recently.

The Commission's corollary assumption that allowing common ownership of two top-four ranked stations will not result in increased local programming is equally suspect. Local broadcasters have provided ample evidence that common ownership leads to an increase in local news and programming. Nexstar broadcasts local news on its MyNetwork affiliates in the Champaign and Little Rock DMAs and has added additional local sports programming because it is able to do so economically as a result of its ownership of another station in each market. Belo Corp.'s stations KING-TV and KONG-TV have added local programming since Belo's duopoly

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affiliate in Panama City (DMA 159), is a daily program called *Right This Minute*, which is described as an interactive news program that presents video from eyewitnesses around the world, revealing the latest in dramatic, thought-provoking, social and popular events. In Billings, Montana (DMA 168) neither the ABC nor the FOX affiliated stations broadcast local news. In Jackson, Tennessee (DMA 176), there is no NBC affiliate and the ABC and CBS affiliates are both broadcast over WBBJ-TV. The vast majority of the news broadcast on the WBBJ ABC and CBS streams are simulcast. The FOX station (WJKT) broadcasts a 30 minute news program called CW30, which appears to be a rebroadcast of the ABC news from Memphis (both the Memphis and Jackson stations are owned by Newport Television). In Bend, Oregon (DMA 193), KBNZ-LD (the CBS affiliate) simulcasts the KOIN (Portland) news, and KOHD (the ABC affiliate) simulcasts KEZI (Eugene) news. The information in this footnote was obtained from a review of the programming available on randomly selected medium and small market stations from www.titantv.com on Feb. 29, 2012.

34 *See Fox Claims 7th Straight 18-49 Crown*, pub. May 26, 2011, http://www.thewrap.com/tv/column-post/fox-claims-7th-straight-18-49-crown-27749 (last visited Mar. 2, 2012).

acquisition in 2000.[35] LIN Television Corporation has duopolies in several markets, and in 2009 (when the television industry as a whole was experiencing severe economic pressures), used the scale and infrastructure that these combinations provide to expand its local programming in its markets.[36]

Moreover, when Nexstar's stations WFFT-TV (Fort Wayne, IN), KOZL-TV (Springfield, MO) and WTVW (Evansville, IN) ended their affiliation with the FOX network, each of these stations added more local programming to their schedules rather than decreasing it.[37] Nexstar's independent stations are not unique.[38] The fact that independent stations have added more news shows that neither network affiliation nor market ranking has anything to do with a station's decision to produce or expand its local news. Accordingly, it is time for the Commission to acknowledge that a station's in-market ranking has no determination on the amount of local news a station will produce.

2. <u>The Eight Television Voice Restriction Is No Longer Necessary To Ensure Consumers Have Many Sources for Local Information.</u>

The eight voice restriction also is an anachronism from the bygone days when consumers did not have access to the large number of places to obtain local and national news that they do today. The Pew Local News Study found that more than 55% of Americans think it is easier to

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[35] *See Comments of Belo Corp on the FCC's May 25, 2010 Notice of Inquiry*, filed in response to the Commission's *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 25 FCC Rcd 6086 (2010) (hereinafter comments related thereto "NOI Comments"), submitted July 12, 2010, pp. 7-8.

[36] *See Comments of LIN Television Corporation*, NOI Comments, submitted July 12, 2010, pp. 3-4.

[37] WFFT-TV launched additional news as well as a Sunday evening sports recap program while upgrading its facilities to allow for broadcast of its local programming in high definition. KOZL-TV began broadcasting local programming in HD, doubled its local news, launched a lifestyle program, and added SEC basketball and a weekly half hour local sports program. WTVW now produces 36.5 hours of news plus locally focused sports programming and a high school quiz show, which will lead to college scholarship awards for the winning team.

[38] State of the News Media 2011: Local TV Essay, available at http://stateofthemedia.org/2011/local-tv-essay/data-page-3/ (last visited Mar. 2, 2012).

get the local information they want than it was five years ago, identifying local television, word of mouth, newspapers, radio, the Internet and newsletters about the community as their main sources for obtaining local news.[39] The study further found that the Internet serves as the main source for information about restaurants and other local businesses, and is a top source for information about housing, jobs and schools (with local television being the primary source for weather, breaking news and traffic).[40] As previously noted, the Internet is the first or second most relied-upon source for 15 of the 16 local topics examined in the study for those Americans who are online, with adults under 40 indicating that the Internet is a primary source for information about weather, politics, crime, arts/cultural events, local businesses, schools, community events, restaurants, traffic, taxes, housing, local government, jobs, social services, and zoning/development.[41]

Further, in one area of significant concern to the Commission – political information – among the two-thirds of Americans that follow news and information about local political matters, roughly the same percentage turn to television newscasts or television websites for this information (28%) as turn to the local newspaper or its website (26%), with the Internet a not too distant third (17%). Further, among adults under 40, the Internet is already the top source for local political information (26%), with only 19% identifying local TV news as their top source for this information.[42]

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[39] Pew Local News Study, available at http://www.journalism.org/analysis_report/local_topics_people_follow_and_information_sources_they_use (last visited Mar. 2, 2012).

[40] *Id.*, available at http://www.journalism.org/analysis_report/role_local_tv_news (last visited Mar. 2, 2012).

[41] *Id.*, available at http://pewinternet.org/~/media//Files/Reports/2011/Pew%20Knight%20Local%20News%20Report%20FINAL.pdf, p. 6 (last visited Mar. 2, 2012).

[42] *Id.* at p. 20.

Moreover, the Commission's espousal of eight required television voices to ensure that there is an appropriate level of competition in a market is belied by the fact that there are fewer than 100 markets that have the requisite eight stations necessary to be deemed "competitive" by the Commission. Further, the Commission shortly will be seeking to have some stations cease operations in order to further television spectrum auction plans, which axiomatically means there will be fewer television stations available to provide local programming in some markets.

It is absurd to think that stations in these "fewer than eight station" markets do not compete with each other for the available revenues by affiliating with different networks, purchasing compelling syndicated programming and, to the extent their revenues permit, by providing a strong local news and community presence to provide viewers with a connection to the station and drive the station's revenues.[43] This competition to obtain the best network and syndicated programming and the most viewership will not change if the Commission eliminates the eight voice restriction and permits one owner to own two stations in a market.

There is no magic number of "voices" (whether segment-specific or otherwise) that assures consumers have access to compelling programming and local news. Rather, ensuring that consumers have access to financially viable outlets with sufficient resources will assure that they are served with programming that meets the needs of their local community. If the Commission continues to insist on a single service voice count (ignoring the vast amount of information available from radio, newspapers, cable and satellite distributors, the Internet and every other competing information source), local television programming may not be there to serve the very consumers the Commission purports to be protecting with its outdated rules.

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[43] As the FCC's own internal analysis shows, in markets with six or fewer stations only 22.5% of these markets have stations providing at least 30 minutes of local news per day. NPRM at fn 117. If, as demonstrated by Nexstar, Belo and LIN, duopoly ownership increases local news, this alone supports elimination of the eight voice test.

III. ALLOWING DUOPOLIES IN ALL MARKETS WILL STRENGTHEN BROADCASTERS' ABILITY TO SERVE THEIR COMMUNITIES.

The Commission reaffirms that a major policy goal of its rules is to encourage the provision of local news.[44] However, the Commission's *ownership* rules do not require a television station to broadcast local news and other programming. Indeed, medium and small market broadcasters do not provide service to their communities because the Commission limits television ownership to one station in their markets, but rather because it is what makes them unique to their viewers.[45] By providing local news and other community service they engage their community, which in turn drives viewers to the station, which drives revenues to the station.

However, the costs associated with producing local news are extremely high and require significant capital investment. The overly restrictive Local TV Ownership Rule negatively impacts a station's ability to produce news and other local programming by limiting the funds available for news production. The rule's impact is particularly acute in many small and medium markets, where the total amount of available market revenue is simply insufficient for four, or even three, separately owned television stations to invest the substantial outlay required to undertake a local news operation.

The significant efficiencies inherent in joint ownership and operation of television stations in the same market include not only the obvious efficiencies of co-location and sharing of studio and office facilities, sharing of management, administrative and technical staff, and efficiencies in advertising, sales and newsgathering, but also less obvious efficiencies such as

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44 NPRM at p. 4.

45 As noted in footnote 33 *supra*, even in the smallest of markets stations seek creative solutions in order to provide their viewers with some reasonably local news.

reduced corporate overhead (with one corporate structure rather than two), cost of money efficiencies from having one loan instead of two, and less consulting expenses. In addition, being able to purchase programming for two stations in a market allows a broadcaster to achieve a better purchase price, with the savings available to fund the stations' local operations.

As a plethora of comments in past ownership reviews have demonstrated, when weaker stations combine or share operations with stronger stations in the same market through a duopoly, the stations are able to sustain or increase otherwise threatened local news programming, add new programming and otherwise enhance service to their communities. Co-ownership of two stations in a market allows the stations to provide more local programming (whether such programming is additional news, coverage of local sporting events or a telethon in support of a local charity) to viewers because the co-owned stations can shift such programming from one station or the other as necessary to comply with the limited preemption rights found in their various network programming agreements. For example, in the Champaign DMA, Nexstar's stations – WCIA and WCIX – are able to carry Illinois high school state championships for football and boys and girls basketball, as well as Chicago Bulls, Cubs and White Sox games because the stations are able to utilize both platforms to meet the needs of the schools and sports teams. The stations are also using their production equipment to provide over two hours of live coverage from this year's Illinois Marathon in Champaign. On its own, WCIA would not be able to broadcast the marathon due to CBS network programming commitments and WCIX alone (with less than two percent of the market's revenues) would not be able to broadcast the marathon because it would not have access to the costly production equipment or staff necessary to produce the broadcast. In addition to the local news and other programming broadcast by WCIA and WCIX, the duopoly ownership benefits to the community include giving local organizations more exposure utilizing both platforms.

These duopoly benefits are not unique to the Champaign DMA, Nexstar is able to provide the same level of service with its co-owned stations in the Little Rock DMA as well. For example, in addition to KARK-TV's 24.5 hours of local news, KARZ-TV (the MyNetwork TV affiliate) provides the market with 7.5 hours of local news per week. Nexstar also produces a weekly 30 minute program called *Talkin Outdoors* (which is broadcast on both KARK-TV and KARZ-TV as well as Nexstar stations in two other markets), and a biweekly 30 minute program called *Dr. David* which airs on KARK-TV. The stations also are able to provide more local programming focused on local high school and college sports. Organizations such as the CARTI-Cancer Research Institute with its Tour de Rock and Festival of Trees, Arkansas Food Bank, Big Brothers/Big Sisters, Arkansas Rice Depot, Race for the Cure, Arkansas Heart Ball, Boys and Girls Club of Central Arkansas, Baptist Health Bolo Bash and Arkansas State Fair benefit from the duopoly platform by getting their message out to a wider audience through the promotion and broadcast on two stations.

These benefits of duopoly ownership – more local news, more local sports programming, greater community involvement by both stations – are the direct results of the efficiencies Nexstar has been able to achieve as a result of its permitted duopoly ownership of WCIA and WCIX in Champaign and KARK-TV and KARZ-TV in Little Rock.

Notwithstanding these concrete and specific examples of the benefits flowing from duopoly ownership, Nexstar expects that a number of public interest groups will file comments in this proceeding espousing "theories" of harm that will befall local communities if the Commission permits duopoly ownership. They will include theoretical studies with little or no basis in reality from consultants who advance their arguments.[46] They also will encourage their supporters to provide the Commission with petitions or comments using form letters that provide no real merit to the discussion.[47]

Some of these opponents will complain that duopoly ownership results in decreased news staff, ignoring the fact that the television industry (and the country as a whole) just suffered through several of the worst economic years forcing stations to learn to do more with less, and as efficiently and economically as possible.[48] These opponents ignore that co-owned stations can reduce management staff, using one news director for both stations, which then allows stations to invest in more reporters or more newsgathering vehicles. Further, in the past, stations needed to send at least a reporter and photographer to cover a news story. With today's technology, reporters are increasingly one-man bands who can fulfill both functions. Thus, and contrary to speculation and theory, decreasing staff does not necessarily translate into less reporting.

These opponents will (again) theorize that co-owned stations produce less diverse local news because the stations report the same stories and broadcast the same news. Reality does not conform to this ivory tower theory. Although Nexstar may repurpose some news stories on its duopoly stations, the WCIA newscasts are more traditional while the WCIX newscasts are more

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46 Even the Commission has engaged in this type of study. For example, the results of the Commission's Media Ownership Study Number 2 – Consumer Valuation of Media as a Function of Local Market Structure – is premised on the assumption, not the fact, that reducing the number of owners in a market will reduce diversity. Specifically, the authors state that "We use our demand estimates to calculate the changes to consumer welfare from a merger between two television stations that results in quality differences in localism and diversity in the pre- and post-merger markets." Yet nowhere in the study do the authors explain or substantiate why they are making the assumption that reducing the number of owners automatically translates to a reduction in the diversity of programming, given that the commonly owned stations are almost certainly airing different programming.

47 *See, e.g.*, the filings of Free Press on December 7, 2011 which include the signatures of nearly 30,000 people urging the Commission to put the "public interest first" as it proceeds with the 2010 Quadrennial Review.

48 Although the television industry has shown some signs of recovery, the long-term revenue picture for local stations that produce news is grim. When adjusted for inflation, average station revenues have dropped more than 46% since 2000. State of the News Media 2011: Local TV Essay, available at http://stateofthemedia.org/2011/local-tv-essay/data-page-3/ (last visited Mar. 2, 2012).

interactive and include a live chat room. These opponents also disregard the fact that much of the important local news of the day (a mayor's press conference, the train derailment, local sports and weather) will be covered on all of the local stations in the market on all of their daily newscasts because all stations view this type of information as of interest to their viewers. If the goal is to create an informed citizenry, providing key local news and information to as many viewers as possible can only be a positive.

These opponents who demand more local news also ignore the reality that simply adding more news hours without adding more resources will reduce the quality of all of the local news. Duopoly ownership permits stations to save money in facilities, equipment, management, engineering, backroom accounting and other similar functions making more resources available to provide more of the local programming these opponents support.

Strangely, at least one public interest group argues that it would prefer that the Commission let broadcast stations fail so the Commission can find new uses for the spectrum.[49] This argument flies in the face of their arguments that duopolies must be prohibited in order to assure local news is available in the market. If a station fails there is axiomatically going to be less local news available in the market.

As the Commission recognized, and the Court affirmed almost a decade ago, duopolies "ensure that small-market stations [] realize the efficiency benefits of consolidation" which is necessary because stations "in those small and mid-sized markets are experiencing greater competitive difficulty than stations in large markets."[50] It is past time for the Commission to accept that if the Commission desires to encourage medium and small market local broadcasters

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49 *See UCC et al.* NOI Comments at pp. 5-6.

50 *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 415-17 (3d Cir. 2004).

to continue providing local news, it must ignore the blanket generalizations and speculative unsupported theories of the public interest opponents that do not provide sufficient evidence to justify retaining the Local TV Multiple Ownership Rule and accept the hard evidence provided by broadcasters such as Nexstar, Belo and LIN about the improvements duopoly ownership has brought in their local markets and permit duopoly ownership in all markets.[51]

Nexstar, Belo and LIN have proven that television duopolies can render it economically feasible for the stations involved to provide a greater amount of local content (including local news broadcasts) than they would if they were to remain independent. The efficiencies and synergies that come through the shared use of production facilities and back office staff make the difference between profit and loss and ensure that local content continues to be a part of the duopoly station schedules.

IV. UNTIL THE COMMISSION PROVIDES DUOPOLY RELIEF IN ALL MARKETS, THE COMMISSION MUST ALLOW TELEVISION BROADCAST STATIONS TO CONTINUE OPERATING UNDER LOCAL SERVICE AGREEMENTS.

Without any credible evidence, public interest groups hypothesize that stations operating under Local Service Agreements are unable to devote sufficient resources to independent journalism as a result of staff reductions and resource sharing; assert that Local Service Agreements result in re-run content; claim that Local Service Agreements reduce the quality, quantity and diversity of local news coverage; and theorize that broadcasters are using these

[51] Notwithstanding the clear evidence of permitting duopolies in all markets, the Commission tentatively, but wrongly, concludes it should retain the television duopoly restrictions, and instead asks whether it should adopt a waiver standard for small markets facing severe competitive pressures. NPRM at p. 20. The fact that the Commission is asking if it should be adopting a new waiver standard for stations in medium and small markets is justification in and of itself that the television broadcast industry needs duopoly ownership relief. The Commission's solicitation of comments on a waiver standard is a clear acknowledgement that many broadcast television stations are struggling to survive and compete in the 21st-century media marketplace. In Nexstar's view, that concern is far better addressed with a simple, easily-administrated relaxation of the Local TV Ownership Rule than by resource-consuming case-by-case evaluation of individual waiver requests.

agreements to "circumvent" the Commission's rules.[52] The Commission credits the "beliefs" and "contentions" of these groups and seeks comment on whether it should make such agreements attributable under its rules, notwithstanding its long history of non-attribution for these types of arrangements.[53]

Nexstar provides services to 17 full-power television stations through Local Service Agreements with the owners of these stations (Mission Broadcasting, Inc. and Sinclair Broadcast Group). These relationships enable Nexstar to provide actual evidence – not "belief," "supposition," or "conjecture" – of how Local Service Agreements benefit the communities in which it has such agreements. These relationships have allowed the involved stations to provide more local news to their communities, purchase Doppler weather radar equipment and electronic newsgathering vehicles, offer local non-profits greater exposure, and permit the stations to be more active community participants. Indeed, contrary to the public interest group claims, Nexstar's LSAs generally have increased news resources available to the stations; do not result in repurposed content; have expanded the quantity of available, diverse local news coverage; and fully comport with the Commission's rules.[54]

As established above, television broadcasters today are operating in a challenging and hyper-competitive environment and must operate as innovatively and efficiently as possible in

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[52] A number of multichannel video programming distributors also object to LSAs claiming these agreements provide local television broadcasters with "leverage" during retransmission consent negotiations. This complaint has been fully briefed in the Commission's retransmission consent proceeding (*see Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, FCC 11-31, rel. March 3, 2011) and Nexstar will not rehash those arguments here. Nexstar suggests that the retransmission consent proceeding is the correct place for the Commission to address any concerns regarding retransmission consent negotiations.

[53] NPRM at pp.81-82.

[54] The Commission previously and repeatedly has determined that Nexstar's Local Service Agreements do not confer influence over the station licensees with respect to programming or other core operating functions, and Nexstar does not understand how something the Commission has fully reviewed and approved can be said to "circumvent" the Commission's rules.

order to provide their communities with local news and programming. Producing high quality local TV news is expensive and the advertising base in most small and mid-sized markets cannot support four stand-alone television news operations. Producing local news requires a substantial upfront capital investment in news trucks, cameras, equipment, and a news set, as well as the hiring of reporters, anchormen, camera operators, producers, and news directors. According to a 2010 study by the National Association of Broadcasters, the average news operating budget in medium and small markets is $1.8 million.[55] Given limited advertising revenue and the steep expense of a local news operation, the only way for many broadcasters (even top-four network affiliates) in today's medium and small markets to provide local news is through a sharing arrangement with another in-market station. This is fact, no matter how much the public interest groups with their ivory tower theories and studies would prefer to ignore economic reality.

Local Service Agreements permit television stations to produce tangible public interest benefits that otherwise would not be available to local residents in their markets. A few highlights of the benefits of Nexstar's LSAs include:[56]

- Monroe, Louisiana (DMA 137) – the LSA has enabled the existing news staff on Mission's KTVE-TV to introduce morning news on Nexstar's KARD from 7:00-8:00 a.m. and evening news from 9:00-9:30 p.m. Monday through Friday, providing an additional 7.5 hours of local news in the market per week. (The news broadcasts on KTVE-TV and KARD have different formats as well as a different feel, with the 9:00 p.m. newscasts much faster paced with a heavier focus on local weather.) Without the LSA, the KTVE-TV investigative news unit would be unable to do the reporting it does and the stations would not have *two* live trucks available for remote reporting. The stations also would not be able to offer the public affairs programming (debates and fundraisers) that they are currently able to support. Nexstar also upgraded the stations' news sets in 2011.

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55 National Association of Broadcasters, GN Docket No. 10-25, Attachment B, The Economic Realities of Local Television News, at p. 13. Nexstar has calculated that it costs an average of $1.5 million to produce local news in its LSA markets. *See* Appendix A hereto.

56 Information regarding the benefits of Nexstar's LSAs not set forth here may be found in Appendix A hereto.

- Joplin, Missouri (DMA 149) – this LSA allows the production of 19.5 hours of local news on KSNF and 14 hours of local news on KODE-TV, with both stations also able to produce different shows with local sports coaches. Each station's newscasts have their own separate and distinct identities. In addition, when the KSNF tower came down in 2009, Nexstar was able to leverage the insurance funds to build two state-of-the-art news sets in its building, as well as prepare both stations for eventual HD news broadcasts.[57] Of further critical import, the cost savings generated through the LSA allowed Nexstar to purchase a Doppler weather radar system which was instrumental in saving lives on May 22, 2011 when an EF-5 tornado tore through much of Joplin with destructive and deadly force. The LSA also was critical to KSNF's and KODE-TV's immediate post tornado coverage because, through the simulcast of the continuous news coverage on both stations, the stations were able to use their combined resources to cover much more of the damaged area providing much needed information to the community. In addition, because the control rooms for both stations are identical, the limited production staff that was at, or able to make it into, the stations were able to keep both stations on the air through the night.

- Peoria, Illinois (DMA 116) – the LSA has allowed the introduction of local newscasts on Sinclair's Fox-affiliated WYZZ-TV. Contrary to the public interest group complaints, each station has different anchors, on-air graphics, music and feel. The 9:00 p.m. newscasts on WYZZ-TV provide news and information to the community in a time period that is not otherwise available to viewers due to the prime-time network programming on the ABC, NBC and CBS stations at that time. The LSA also permitted the investment in additional ENG equipment for the stations.

- Erie, Pennsylvania (DMA 146) – this LSA allows for 12 hours of news programming on a Fox-affiliated station, with local newscasts at 8:00 a.m. and 10:00 p.m. Monday through Friday and 10:00 p.m. on Saturday and Sunday. The 10:00 p.m. newscasts allow viewers in a manufacturing-based market with shifts starting at 7:00 a.m. to watch the late local news while still getting to bed at a reasonable hour. WFXP's morning newscasts allow stay-at-home parents to watch the news after their children have left for school and third shift workers to watch a live newscast before "retiring for the night." The stations also were able to upgrade their news sets and weather equipment in 2011.

- Evansville, Indiana (DMA 104) – On December 1, 2011, Nexstar and Mission initiated a Local Service Agreement between WEHT and WTVW. WEHT will continue to provide 24 hours per week of local news, while WTVW will continue to provide 27.5 hours of local programming. With the more than $500,000 in savings from the combination of facilities, management staff and shared equipment, in 2012 the stations are upgrading the weather system to improve the Doppler weather radar (which will now be available to both stations and not just WEHT); upgrading both stations' newscasts to HD; and are able to provide expanded breaking news and regional sports coverage because both stations now have access to a satellite truck. The new combined platform also expands

[57] Contrary to the public interest group theorists, the stations are able to cover more news stories, and "repurpose" news on both stations using unique talent to tell the story in a different way to support each station's unique brand.

the reach for local organizations as they now have access to more viewers by leveraging both stations.

- Utica, New York (DMA 172) – In a DMA with an estimated revenue base of less than $13 million, with a dominant station that earns nearly 65% of the markets revenues,[58] Nexstar invested more than $900,000 to launch 7.5 hours of local news per week (5 on Mission's WUTR (ABC) and 2.5 on Nexstar's WFXV (FOX)) in September 2011. Nexstar anticipates that it will cost at least $750,000 to sustain the 390 plus hours of local news on these stations in 2012.

Without Local Service Agreements, Nexstar's partners would have to expend millions of dollars to establish the infrastructure (purchasing equipment and hiring personnel) to produce local news. These expenses, in the medium and small markets in which Nexstar operates, are of a magnitude that these stations would simply be unable to provide local news absent the efficiencies that LSAs make possible.[59] The loss of the arrangements would also negatively impact Nexstar's stations resulting in less resources available to Nexstar for investment in high definition news sets and production equipment, less time available for local sports programming (due to the inability to split the broadcasts across two stations to comply with network requirements), and potentially a reduction in its news hours as well. Without these types of relationships, many small market stations will be unable to support any type of local news production, let alone any other local programming. Thus, the Commission should ignore the unsupported, speculative assertions that these relationships somehow "circumvent" the Commission's rules and decline to make Local Service Agreements attributable under its rules.

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58 *Investing in Television Market Report 2011 Fourth Edition*, BIA/Kelsey, DMA 172.

59 In 2011, Mission paid Nexstar approximately $7.2 million not only for producing more than 7,400 hours of local news on 12 of its stations, but also for engineering, accounting and other back office administrative assistance provided under the parties' shared services agreements. Without the LSA, Mission would have been able to produce local news only on three or maybe four of its stations, thereby leaving 8 of the 12 markets that currently receive newscasts from a Mission station without that source for local news.

V. CONCLUSION.

As far back as 1999, the Commission recognized that "there are significant efficiencies inherent in joint ownership . . . of television stations in the same market . . . and . . . these efficiencies can contribute to . . . benefits such as increased news and public affairs programming, and, in some cases, can ensure the continued survival of a struggling station."[60] Duopolies generate efficiencies in non-programming areas including the sharing of facilities, sharing of equipment, sharing of station administration and engineering personnel and reduced corporate overhead. Duopolies allow two stations to provide more local news and other services to their communities. Yet the Commission continues to prevent those stations most in need of such benefits from achieving them with its outdated Local TV Ownership Rule.

Today's media marketplace offers more and more options for consumers while providing more and more competition to local broadcasters. In order to preserve the much desired local news, the vital emergency information and the highly-valued entertainment programming consumers so desire from their local stations, stations must be supported and sustained by economics that make sense in today's world. Broadcasters cannot compete successfully, and serve their communities successfully, unless they have at least a relatively level playing field with their competitors.

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60 1999 Biennial Review Order at p. 12930.

WHEREFORE, for the foregoing reasons, Nexstar respectfully urges the Commission to modify the Local TV Multiple Ownership Rule to allow television broadcasters to own two commercial TV stations in any market. Until the Commission provides this relief, the Commission should take no action to undermine television broadcasters' ability to enter into local service agreements.

Respectfully submitted,

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<u>**APPENDIX A**</u>

Nexstar-Mission News Hours/Production Costs

Market/DMA Number	**Nexstar Station/ Affiliation**	**Number of News Hours/Week**	**Mission Station/ Affiliation**	**Number of News Hours/Week**	**2011Combined News Production Costs (excluding capital expenditures)**
Wilkes-Barre-Scranton (DMA 54)	WBRE-TV ABC	31 (includes PA Live lifestyle focused news program)	WYOU CBS	0[1]	$3,000,000
Springfield, MO (DMA 75)	KOZL-TV Independent	23(includes Ozarks Live lifestyle focused news program)	KOLR CBS	22	$1,900,000
Evansville (DMA 104)	WEHT ABC	24	WTVW Independent	23.5	$2,800,000
Amarillo (DMA 130)	KAMR-TV NBC	18.5	KCIT FOX	6	$1,000,000
Rockford (DMA 134)	WQRF-TV FOX	6	WTVO ABC	19.5	$1,200,000
Monroe-El Dorado (DMA 137)	KARD FOX	7.5	KTVE-TV NBC	19.5	$1,100,000
Wichita Falls – Lawton (DMA 142)	KFDX-TV NBC	22.5	KJTL FOX	2.5	$1,200,000
Lubbock (DMA 143)	KLBK-TV CBS	16.5	KAMC ABC	16.5	$2,900,000
Erie (DMA 146)	WJET-TV ABC	22	WFXP FOX	12	$1,300,000

[1] Mission broadcast local news on WYOU until April 2009. Despite working for more than 10 years to make local news on WYOU profitable, Nexstar ceased producing local news programming for WYOU under the parties' shared services agreement because Nexstar's costs for producing the news for WYOU far exceeded the revenues Nexstar could bring in for advertising during and adjacent to the newscasts. When Nexstar launches high definition news on WBRE-TV in April 2012, it intends to re-launch 30 minute high definition newscasts on WYOU at 12:00 p.m. and 7:00 p.m. Nexstar notes that it also has a news-only services agreement pursuant to which Nexstar produces 7 hours per week of local news for WOLF-TV (FOX).

Market/DMA Number	Nexstar Station/ Affiliation	Number of News Hours/Week	Mission Station/ Affiliation	Number of News Hours/Week	2011Combined News Production Costs (excluding capital expenditures)
Joplin-Pittsburg (DMA 149)	KSNF NBC	19.5	KODE-TV ABC	14	$1,400,000
Terre Haute (DMA 154)	WTWO NBC	14.5	WAWV-TV ABC	5	$1,100,000
Abilene-Sweetwater (DMA 164)	KTAB-TV CBS	19	KRBC-TV NBC	16.5	$1,000,000
Billings (DMA 168)	KSVI ABC	0[2]	KHMT FOX	0	$0
Utica (DMA 172)	WFXV FOX	2.5	WUTR ABC	5	$215,000 for 4 months ($750,000 budgeted for 2012)
San Angelo (DMA 197)	KLST CBS	19	KSAN-TV NBC	9	$760,000

Market/DMA Number	Nexstar Station/ Affiliation	Number of News Hours/Week	Sinclair Station/ Affiliation	Number of News Hours/Week	2011Combined News Production Costs (excluding capital expenditures)
Rochester (DMA 79)	WROC-TV CBS	27	WUHF FOX	7	$2,000,000
Peoria (DMA 116)	WMBD-TV CBS	27	WYZZ-TV FOX	5	$1,300,000

2 The Billings DMA has two television stations (KTVQ and KLUR-TV) that collectively earn 80% of the market revenues leaving less $3,000,000 in revenues split among KSVI and KHMT, making any type of news production on these stations infeasible.

LSA Benefits

In All Markets – In addition to the above local news hours which are supported under the LSAs, combining back room operations (accounting, engineering) creates the “excess” funds to produce more news and local programming and invest in upgrading production equipment. Community ascertainment is more expansive covering more input groups. Public service projects/community non-profits benefit from greater exposure due to the promotion on two stations which in general allows the supported organizations to achieve greater returns. The stations are able to bring more local sports programming to the community by splitting the broadcast of such programming over two stations (in order to comply with the network requirements in the stations’ affiliation agreements) and/or cover more local events, such as marathons, parades and festivals.

Wilkes-Barre-Scranton (DMA 54) – Nexstar produces and broadcasts *Newsmakers*, a monthly news-oriented public affairs program that is broadcast three times each month on WBRE-TV and once a month on WYOU. Nexstar is making the capital investment in 2012 necessary to launch its local programming in high definition, and will again be launching local news on WYOU.

Springfield, Missouri (DMA 75) – Nexstar previously was able to purchase a satellite production truck that allows both stations to produce remote local programming from the 31 counties in the DMA. In 2011, Nexstar was able to invest more than $600,000 to bring high definition local programming to its stations.

Rochester (DMA 79) – The LSA savings have resulted in the broadcast of 7 hours of local news programming on Sinclair’s WUHF while allowing WROC-TV to expand its investigative journalism resources.

Amarillo (DMA 130) – On a station that earns less than $1 million in revenues from its local news, KCIT is able to broadcast six hours of local news per week because of the LSA. Both KCIT and KAMR-TV also are able to cover more local sports information including, during the season, extensive local high school football coverage.

Rockford (DMA 134) – Nexstar is launching an additional two hours of local programming on WQRF-TV in 2012 that would not be possible without the efficiencies achieved through the LSA.

Wichita Falls-Lawton (DMA 142) – In addition to the news broadcasts on KFDX-TV and KJTL, Nexstar also broadcasts a daily program called *RFD-3 with Joe Brown* (a local farm and ranch report) Monday through Friday and a half-hour sports program after KFDX-TV’s Sunday late news. During football season KFDX-TV broadcasts a weekly half-hour program dedicated to local high school sports. The stations are also able to dedicate staff and time to follow the Dallas Cowboys through training camp and preseason.

Lubbock (DMA 143) – Both stations have access to the Doppler weather radar system and satellite truck, which were purchased through the savings generated from the LSA efficiencies. The stations also were able to upgrade the newsroom to a tapeless system that streamlines the editing process.

Terre Haute (DMA 154) –Mission's WAWV-TV broadcasts a weekly business news focused program, *Valley Business Weekly*, which is rebroadcast on Sunday night and, during basketball season, broadcasts a weekly 30 minute coaches program called *Inside Sycamore Basketball*. The LSA also permits the stations to produce one Indiana State football game, Indiana State basketball games and a local high school basketball tournament because the stations are able to shift the programming between themselves in order to ensure both stations are in full compliance with their network affiliation obligations.

Abilene-Sweetwater (DMA 164) – this LSA was critical to the survival of KRBC-TV in 2007 when the KRBC-TV tower collapsed from ice. The LSA allowed for the construction of a new digital transmitter building at the KTAB-TV tower site and installation of the KRBC-TV digital antenna on the KTAB-TV tower less than five months after the Commission granted KRBC-TV a construction permit to relocate its digital facilities to the KTAB-TV antenna site. On a stand-alone basis, even with insurance proceeds, Mission would not have had the capital necessary to rebuild a tower and purchase all new digital equipment, let alone have the station back broadcasting that quickly. The LSA permits the stations, with combined revenues of less than $7 million, to produce 35.5 hours of news and other local programming a week, while still being able to make needed capital investments and equipment repairs.

Billings (DMA 168) – Due to two dominant in-market stations, Nexstar's KSVI and Mission's KHMT earn a combined revenue of less than $3 million. This LSA quite simply ensures the survival of both stations giving this small market a full complement of big 4 network affiliated stations, while allowing the community to benefit from the expanded reach these two stations provide to organizations such as the Special Olympics, local theaters, Relay for Life and Habitat for Humanity, among others.

San Angelo (DMA 197) – In a market with $7 million in total revenues, the LSA permits these two stations to broadcast 30 hours of local programming per week, plus local programming specials throughout the year. The stations also are able to leverage the LSA cost savings giving both stations the ability to purchase more popular syndicated programming for the market. In addition, the LSA ensures that the stations can make capital investments in the stations as needed, while still remaining active in sponsoring and participating in community events, like the San Angelo Stock Show and Rodeo.